

## **NSR Reform Issue Paper: Plantwide Applicability Limitations (PALs)**

### **I. Background**

The new rules allow for the development of plantwide applicability limitations (PAL) based on actual emissions. If the owner of a source elects to establish a plantwide actual emissions cap, then the new regulations will make the major NSR rules not applicable to new or modified emissions units as long as actual emissions remain below the cap. In return for this flexibility, emissions from all emission units under the PAL must be rigorously monitored to ensure that the emission cap is not exceeded. A PAL offers flexibility and regulatory certainty. In order to take full advantage of a PAL, sources will need to keep emissions well below the cap.

Currently, there are state regulations in 326 IAC 2-1.1-12 that address facility wide emission caps in operating permits. The state rule was submitted to U.S. EPA as a revision to the minor NSR SIP on February 3, 1999, but has not yet been approved. If the state rules are not amended to include the PAL or 326 IAC 2-1.1-12 is not approved into the SIP, then units that would otherwise be covered under the PAL would be subject to major NSR.

### **II. Issues**

The following are issues or questions that IDEM or stakeholders have raised for consideration:

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA;
2. Limit the PAL applicability to specific source categories or pollutants;
3. Possibility of revisions to 326 IAC 2-1.1-7 and 326 IAC 2-1.1-8 to include a permitting fee and timeframe for the review of PAL;
4. Procedures for termination or revocation of PAL;
5. Revisions to rules other than 326 IAC 2-2 and 326 IAC 2-3 [PSD and major non-attainment NSR programs] to address implementation of PAL;
6. Can the existing state rule be used, even in the interim, to develop PAL consistent with the federal rule?
7. Should the state rule be more specific regarding how IDEM will set the PAL level at renewal?
8. Consideration of a declining cap.

### **III. Analysis**

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. According to the CAA section 116 (42 USC 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air

pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." At this time, it is not clear what deviations from the federal language will be acceptable to U.S. EPA. Therefore, changes may or may not be approvable by U.S. EPA.

EPA has stated that there is an overall agency effort to promote more flexible air permits. IDEM shares that goal as well. Adopting the PAL provisions as is could make it easier for IDEM to have a SIP approved flexible permitting program.

## 2. Limit the PAL applicability to specific source categories or pollutants

The new federal rules do not specifically limit the type of sources that are appropriate for PAL permit, but in the supplemental analysis they do discuss the sources that would most benefit from this program. This program has proven beneficial for sources that have demonstrated a need for flexibility due to frequent, time-sensitive operational changes and where there are opportunities for economical air pollution control measures. A demonstration of this need could be a factor considered in the applicability of the PAL program.

The PAL program has increased monitoring, recordkeeping and reporting requirements necessary to assure compliance with the flexible permit provisions. If a source has a pattern of compliance violations, it may be a signal that they are unable to handle the additional requirements. Criteria could be developed which would ensure that the additional up-front investment would result in benefits for the source, the regulatory agency and the environment before investing in the resource-intensive development of a flexible permit.

In EPA's environmental benefit analysis they stated that the greatest demand for changes involve Volatile Organic Compound (VOC) emissions. EPA considered the greatest benefit from the PAL program will come from three categories: Pharmaceutical Manufacturing (SIC 2834), Semiconductor Manufacturing (3674) and Automobile Manufacturing (3711). The state rule could limit the PAL applicability to those source categories and VOC emissions, and consider the option of adding other source categories or pollutants at a later time when there has been a demonstrated need for such flexibility and an environmental benefit analysis.

## 3. Possibility of revisions to 326 IAC 2-1.1-7 and 326 IAC 2-1.1-8 to include a permitting fee and timeframe for the review of PAL

The up-front review of the PAL permits will be a resources-intensive review comparable to the site-specific review in the existing PSD regulations. EPA found that the initial permit development costs exceeded those required to develop conventional permits because of the innovative nature of the permits and additional resources associated with developing site-specific flexible permit provisions. The state rule could include an appropriate pollutant-specific fee adjustment in 326 IAC 2-1.1-7 to address

specific resource needs for proposed PALs. Such a pollutant-specific fee could be based on a flat fee approach, or an approach based on the number of significant emissions units, or other means.

EPA also found that the time used to develop the flexibility provisions was much greater than the timeframes needed for the development of conventional permits. Due to the pilot nature of these projects, there is a substantially higher amount of communication between the permitting authority and the source and EPA when developing the flexible provisions. The state rule could include a timeframe for issuing a PAL in 326 IAC 2-1.1-8. This timeframe could be based on the current timeframes for PSD review or some other timeframe.

#### 4. Procedures for termination or revocation of the PAL

The new federal rules do not address voluntary termination or revocation of the PAL. As the new rules are written, it would appear that a source must operate under the PAL for ten years, even if operational changes have been made that make compliance with the PAL cumbersome. When asked, EPA has stated their intent is for a source to have the right to terminate the PAL by requesting the agency to revoke their PAL; also the authority for a permitting agency to revoke the PAL if the source has not shown an ability to comply with the limitations. The permitting agency has the discretion to re-allocate the emissions among the various emissions units at the source. The state rule could include revocation/termination requirements similar to the expiration requirements in 40 CFR 52.21(aa)(9).

When an initial PAL is established, per the regulations, all limitations restricting the PTE of various emissions units below the significance level to avoid applicability of major modification under NSR are removed. In case of termination or revocation of PAL before the expiration timeframe, the state rule could also include procedures for re-establishing the limits that applied to the emission units prior to the pollutant-specific PAL limit was established. This would ensure that emissions from these units do not exceed significance levels for applicability of a major modification under NSR and do not harm the air quality in the area.

#### 5. Revisions to rules other than 326 IAC 2-2 and 326 IAC 2-3 [PSD and major non-attainment NSR programs] to address implementation of PAL

The new federal rules rely on the Title V operating permit program for implementation the PAL. The current Indiana Title V program does not include the requirements of 40 CFR 52.21(aa) necessary to implement the PAL program. The state rules could be revised to be consistent with the new federal requirements.

6. Can the existing state rule be used, even in the interim, to develop PAL consistent with the federal rule?

Currently, there are state regulations in 326 IAC 2-1.1-12 that address facility wide emission caps in operating permits. The state rule was submitted to U.S. EPA as a revision to the minor NSR SIP on February 3, 1999, but has not yet been approved. It is unlikely that EPA would accept us using the current rule since it does not meet the minimum federal PAL requirements for monitoring, recordkeeping, reporting, etc. Under the new Federal requirements, 326 IAC 2-1.1-12 would need to be repealed and replaced with the PAL provisions from 40 CFR 52.21(aa) in the major new source review program.

7. Should the state rule be more specific regarding how IDEM will set the PAL level at renewal?

The new federal rule provides various options that IDEM could consider when renewing a PAL. According to 40 CFR 52.21(aa)(10)(bb) IDEM may "...set the PAL at a level that ...[IDEM] determines to be more representative of the source's baseline actual emissions, or that ...[IDEM] determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors..." Should the state rule be more specific regarding how IDEM would consider these options?

8. Consideration of a declining cap

Discussions of the PAL concept during the years of federal NSR Reform have included the concept of a declining cap. This assures decreased emission over time while still providing sources with the certainty and flexibility of a cap. USEPA notes that in cases where sources have operated under a cap, emissions do tend to decrease over time, as the sources continue to find ways to provide themselves additional flexibility to operate under the cap. Should the state rule include the option of a declining cap? Should the declining cap apply statewide? Should the declining cap apply in non-attainment areas?